

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Proposing rule making related to claims and benefits and benefit payment control and providing an opportunity for public comment

The Director of the Department of Workforce Development hereby proposes to amend Chapter 24, “Claims and Benefits,” and Chapter 25, “Benefit Payment Control,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 96.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 96.

Purpose and Summary

These amendments will give Iowa Workforce Development a clearer framework from which to operate with regard to technology and modern efficiencies. The amendments will also help eliminate inefficiencies that remain as a result of outdated rules.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 3, 2018. Comments should be directed to:

David Steen
Iowa Department of Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Email: david.steen@iwd.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subparagraph **24.2(1)“b”(1)** as follows:

(1) The name and complete mailing address of such individual's last employing unit or employer including work history for all employers within the individual's base period.

ITEM 2. Amend subparagraph **24.2(1)“b”(8)** as follows:

(8) Number, full name, social security number, date of birth, and relationship of any dependents claimed. The identity of an individual identified as a dependent shall be verified by the department before the individual is added to the claim as a dependent. As used in this subparagraph, “dependent” is defined as: spouse, son or daughter of the claimant, or a dependent of either; stepson or stepdaughter; foster child or child for whom claimant is a legal guardian; brother, sister, stepbrother, stepsister; father or mother of claimant; or stepfather or stepmother of the claimant; son or daughter of a brother or sister of the claimant (nephew or niece); brother or sister of the father or mother of the claimant (uncle or aunt); son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the claimant; an individual who lived in the claimant's home as a member of the household for the whole year; cousin.

A “spouse” is defined as an individual who does not earn more than \$120 in gross wages in one week. The reference week for this monetary determination shall be the gross wages earned by the spouse in the calendar week immediately preceding the effective date of the claim.

A “dependent” means an individual who has been ~~or could have been~~ claimed for the preceding tax year on the claimant's income tax return ~~or will be claimed for the current income tax year.~~ The same dependent shall not be claimed on two separate monetarily eligible concurrent established benefit years. An individual cannot claim a spouse as a dependent if the spouse has listed the claimant as a dependent on a current claim.

ITEM 3. Amend rule 871—24.6(96) as follows:

871—24.6(96) ~~Profiling for reemployment services~~ Reemployment services and eligibility assessment procedure.

24.6(1) The department of workforce development ~~and the department of economic development~~ will ~~jointly~~ provide a program which consists of profiling claimants and providing reemployment services.

24.6(2) Purpose.

a. Profiling is a systematic procedure used to identify claimants who, because of certain characteristics, are determined to be permanently separated and most likely to exhaust benefits. Such claimants may be referred to reemployment services.

b. The eligibility assessment program is used to accelerate the individual's return to work and systematically review the individual's efforts towards the same goal.

24.6(3) Reemployment services and eligibility assessment may include, but are not limited to, the following:

- a.* An assessment of the claimant's aptitude, work history, and interest.
- b.* Employment counseling regarding reemployment approaches and plans.
- c.* Job search assistance and job placement services.
- d.* Labor market information.
- e.* Job search workshops or job clubs and referrals to employers.

- f. Résumé preparation.
- g. Other similar services.

24.6(4) As part of the initial intake procedure, each claimant shall be required to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

24.6(5) The referral of a claimant and the provision of reemployment services is subject to the availability of funding and limitations of the size of the classes.

24.6(6) A claimant shall participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services or eligibility assessment. The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause.

a. Justifiable cause for failure to participate is an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant. Justifiable cause includes when the claimant is scheduled for an employment interview, is verified return to work, or both prior to the scheduled appointment or service.

b. Reserved.

24.6(7) Eligibility assessment procedure.

a. Before an individual has claimed five weeks of intrastate benefits, the workforce development center shall receive a computer-selected list of individuals claiming benefits within the target population for review.

b. No eligibility assessment will be performed on an individual unless monetary eligibility and nonmonetary eligibility are established.

c. Once selected for an initial or subsequent eligibility assessment, claimants are required to participate in all components of the assessment as determined by the department.

d. A Notice to Report shall be sent by the workforce development center to an individual who is in an active status at the time of its printing. If the individual does not respond, the department must issue an appropriate failure to report decision and lock the claim to prevent payment.

e. Selected claimants must report in person to the designated workforce development center to receive staff-assisted services for the initial assessment.

f. Before an administrative law judge can rule on a disqualification for failure to report at an Iowa workforce development center as directed, there must be evidence to show that the individual was required to report for an interview.

24.6(8) Conducting the first eligibility assessment interview.

a. All available evidence must be examined to detect potentially disqualifying issues.

b. The individual's need for advice, assistance or instructions must be determined and conveyed to the individual.

c. The interview must convey to the individual the requirements that must be satisfied to maintain eligibility.

d. This advice, assistance or instruction constitutes an understanding and agreement between the individual and the unemployment insurance representative at the conclusion of the interview regarding the individual's willingness and ability to eliminate any barriers to obtaining reemployment which otherwise would result in referral for adjudication.

e. The individual shall be advised of what constitutes an acceptable effort to obtain reemployment in accordance with state policy, with consideration for local labor market information and the individual's occupation.

f. The final objective of the interview is to determine whether a subsequent interview is needed. This determination shall be based on expected return to work date, job openings in the area, local labor market conditions, and other relevant factors.

This rule is intended to implement Iowa Code section 96.4(7).

ITEM 4. Rescind and reserve rule **871—24.11(96)**.

ITEM 5. Amend paragraph **24.22(2)“n”** as follows:

n. Corporate officers. To be considered available, the ~~corporation~~ corporate officer must meet the same tests of availability as are met by other individuals. The individual must be desirous of other work, be free from serious limitations and be seriously searching for work. ~~The reported efforts of a corporate officer to seek work should be studied to distinguish those directed toward obtaining work for the officer as an individual and those directed to obtaining work or business for the corporation. Any effort to obtain business for the corporation to perform is a service to the corporation and is not evidence of the individual's own availability for work.~~

ITEM 6. Amend subrule 24.23(39) as follows:

24.23(39) Where the work search or the Eligibility Review Form has been deliberately falsified for the purpose of obtaining unemployment insurance benefits. The general guide for disqualifications for falsification of work search is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the representative because each case must be decided on its own merits. The administrative penalty recommended for falsification is:

- a.* First offense—six ~~weeks~~ weeks’ penalty.
- b.* Second offense—nine ~~weeks~~ weeks’ penalty.
- c.* Third offense—total disqualification for the remainder of the benefit year plus consideration of the possibility of filing fraud charges depending on the circumstances.

ITEM 7. Amend subrule 24.60(2) as follows:

24.60(2) It is required that information designed to identify illegal nonresident aliens shall be requested of all claimants for benefits. This shall be accomplished by asking each claimant at the time the individual establishes a benefit year whether or not the individual is a citizen.

a. If the response is “yes,” no further proof is necessary and the claimant’s records are to be marked accordingly.

b. If the answer is “no,” the claimant shall be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual’s status is brought to the local office. The principal documents showing legal entry for permanent residency are the Form I-94, “Arrival and Departure Record,”² and the Forms I-151 and I-551, “Alien Registration Receipt Card.”² These forms are issued by the ~~Immigration and Naturalization Service~~ U.S. Citizenship and Immigration Service and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual will be required to provide the individual’s alien registration number at the time of claim filing.

c. Any or all documents presented to the department by an alien shall be subject to verification with the ~~immigration and naturalization service~~ U.S. Citizenship and Immigration Service. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of ~~rule 871—24.56(96), administrative penalties, and rule 871—25.10(96),~~ prosecution on overpayments.

d. ~~Rescinded IAB 8/6/03, effective 9/10/03.~~

ITEM 8. Amend subparagraph **24.60(3)“b”(6)** as follows:

(6) An alien who has been formally granted deferred action or nonpriority status by the ~~immigration and naturalization service~~ U.S. Citizenship and Immigration Service.

ITEM 9. Amend rule 871—25.2(96) as follows:

871—25.2(96) Policy of the investigation and recovery section unit.

25.2(1) The policy of the investigation and recovery ~~section~~ unit is to take aggressive action to prevent, detect, and deter benefits paid through error by the agency or through willful misrepresentation or error by the claimant or others and investigate and penalize fraudulent actions on the part of claimants and employing units.

25.2(2) It shall be the policy of the investigation and recovery ~~section~~ unit to maximize the recoupment of overpayments from those claimants who have received benefits to which they were not entitled. It shall also be the policy of the ~~section~~ unit to seek prosecution of persons whom the ~~section~~ unit believes have committed serious violations of the employment security law of Iowa.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).

ITEM 10. Amend rule 871—25.3(96), introductory paragraph, as follows:

871—25.3(96) Functions of the investigation and recovery ~~section~~ unit. The function of the investigation and recovery ~~section~~ unit is to:

ITEM 11. Amend subrule 25.3(1), introductory paragraph, as follows:

25.3(1) Investigate and make determinations on issues within the scope of the investigation and recovery ~~bureau~~ unit which are referred by the general public, employing units, agency personnel, other agencies, and anonymous sources. The ~~bureau~~ unit shall examine allegations of the following type:

ITEM 12. Amend rule 871—25.4(96) as follows:

871—25.4(96) Allegation of claimant fraud. The procedure to be followed where an allegation of claimant fraud has been made is:

25.4(1) Upon receipt of an allegation of claimant fraud, if the alleging party supplies sufficient information to proceed with an investigation, the alleging party shall be advised that the investigation and recovery ~~bureau~~ unit will make a full investigation of the allegation. The alleging party will be advised of the ~~bureau's~~ unit's findings, if such investigation could affect the employer account of the alleging party or affect a claim for benefits of the alleging party.

25.4(2) The allegations will be promptly forwarded to the investigation and recovery ~~section~~ unit for investigation.

25.4(3) If the findings revealed through the investigation by the investigation and recovery ~~bureau~~ unit indicate that a disqualification would have resulted for the period benefits were paid, an informal fact-finding interview shall be scheduled to allow the party making the allegation and the claimant an opportunity to give testimony. The investigation and recovery ~~bureau~~ unit will determine if separate fact-finding interviews are necessary for the claimant and party making the allegations and any other party with pertinent information.

25.4(4) If the claimant or any other party with pertinent information wishes to invoke the fifth amendment right to remain silent, the investigator can require the claimant or any other party with pertinent information to answer all questions or produce any pertinent documents. However, the claimant or any other party with pertinent information cannot be prosecuted on the basis of any transaction, matter, or thing concerning which the claimant or any other party with pertinent information is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence.

25.4(5) In the event a local office receives an allegation by anonymous communication, the office will forward such information to the investigation and recovery ~~bureau~~ unit.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

ITEM 13. Amend rule 871—25.5(96) as follows:

871—25.5(96) Allegation of employing unit fraud. The following is the general procedure to be followed by the investigation and recovery ~~bureau~~ unit in an employing unit fraud investigation:

25.5(1) Upon receipt of an allegation of employing unit fraud the party making the allegation will provide sufficient information to proceed with an investigation. Information such as the identification and location of the employing unit, the individual or group of individuals suspected of fraudulent action, and what fraudulent action is occurring will be provided, if possible.

25.5(2) The allegation will be promptly forwarded to the investigation and recovery ~~bureau~~ unit for investigation.

25.5(3) The ~~investigations~~ investigation and recovery unit may seek the assistance and expertise of the tax ~~bureau~~ unit staff.

25.5(4) If the findings, revealed through the investigation by the investigation and recovery ~~bureau~~ unit, indicate that misrepresentation occurred on the part of the employer, an informal fact-finding interview will be scheduled for the party or parties to allow them an opportunity to present testimony either refuting or affirming the allegation of employer fraud.

25.5(5) If the employer wishes to invoke the fifth amendment, the investigator can require the employer to answer all questions. However, the employer cannot be prosecuted on the basis of any transaction, matter, or issue concerning which such employer is compelled, after having invoked the privilege against self-incrimination, to testify or produce evidence.

25.5(6) In the event a workforce development office receives an allegation, the office will forward such information to the investigation and recovery ~~bureau~~ unit, provided the communication identifies and supplies sufficient information to proceed with an investigation.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

ITEM 14. Amend subrule 25.6(4) as follows:

25.6(4) An investigator shall have the authority to request all pertinent books, papers, correspondence, memoranda, and other records necessary in the investigation of any error or potential fraudulent activity committed by a claimant, employing unit, or other party. Likewise, testimony may be taken from any person who has relevant information or records concerning the matter or events under investigation. Any person, when requested by an investigator to produce records or give testimony, must be available personally to give testimony to or to produce records within a reasonable time for the investigator. If any person does not comply with the investigator's request to give testimony to the department or produce records, a subpoena may be issued summoning the individual to appear before the investigator to give testimony or present the records.

If the investigator determines that any request for the voluntary production of pertinent records might endanger the existence of such records, the investigation and recovery ~~bureau~~ unit may immediately issue a subpoena duces tecum which orders an individual to produce some document or paper that is pertinent to a pending investigation by the investigation and recovery ~~bureau~~ unit, in order to secure the production of such records.

ITEM 15. Amend subrule 25.6(5) as follows:

25.6(5) The investigation and recovery ~~bureau~~ unit may seek the assistance and expertise of the field auditors.

ITEM 16. Amend subrule 25.6(7) as follows:

25.6(7) Upon completion of the investigation, a determination shall be made as to whether or not fraudulent activity has occurred. If there is fraudulent activity, appropriate corrective action shall be initiated and the alleging party shall be advised of the investigation and recovery ~~bureau's~~ unit's findings, if such investigation could affect the employer account of the alleging party. The case may be prepared for prosecution if prosecution is warranted.

ITEM 17. Amend subrule 25.7(1) as follows:

25.7(1) Determination by reason of the claimant's own fault, employer's fault, agency fault, or fraud as provided in Iowa Code section 96.16, that the claimant has received benefits to which such claimant was not entitled shall be made by the ~~investigations~~ investigation and recovery unit on the basis of such facts as it may obtain.

ITEM 18. Amend subrule 25.7(3) as follows:

25.7(3) Upon receiving a written request for review, the investigation and recovery ~~bureau~~ unit, based upon such facts as it has or may acquire, may affirm, modify, or reverse the prior decision or refer the matter to an administrative law judge. The claimant shall be promptly notified of such decision or referral. Unless the claimant files an appeal within ten calendar days after the date of mailing, such decision shall be final. Timeliness shall be determined by postmark within ten calendar days from the

date of mailing shown on the decision or be received by the department within ten calendar days from the date of mailing.

ITEM 19. Amend subrule 25.7(4) as follows:

25.7(4) The claimant may directly appeal the decision of the investigation and recovery ~~bureau~~ unit without a request for review, in which case the appeal will be referred directly to the appeals section of the department.

ITEM 20. Amend subrule 25.9(3) as follows:

25.9(3) Sources of information concerning the application of an administrative penalty shall be the same as those pertaining to fraud and overpayment, namely:

- a. Employer report of wages, with comparative analysis of them with concurrent benefit payments.
- b. Local office obtaining late reports by claimant of deductible income items or potentially disqualifying circumstances.
- c. Tips and leads from other sources of claimant being employed while claiming benefits or that such claimant did not otherwise meet the eligibility requirements.
- d. Cross-checking of information on death tapes from the vital statistics section, division of administration, department of public health.
- e. Review of claims using social security numbers not issued by the social security administration.
- f. Cross-checking of information from the Iowa centralized employer registry.
- g. Cross-checking of information with the National Directory of New Hires.
- h. Cross-checking of information on incarcerated individuals from the Iowa department of corrections.
- i. Cross-checking of information with fraud detection tools identified by the department.

ITEM 21. Amend subrule 25.9(9) as follows:

25.9(9) A criminal conviction of a claimant for fraud or an order of the court requiring restitution for the amount of the overpayment shall not preclude the investigation and recovery ~~bureau~~ unit from also imposing an administrative penalty denying further benefits to the claimant for a period of time not to exceed the remainder of said claimant's benefit year and including the week in which such determination is made by the investigation and recovery ~~bureau~~ unit.

ITEM 22. Amend rule 871—25.10(96) as follows:

871—25.10(96) Prosecution on overpayments.

25.10(1) When an overpayment occurs due to misrepresentation, the case shall be given a thorough and detailed review of the facts, as obtained by the investigation and recovery ~~bureau~~ unit, to determine if a prosecution for fraud would meet the county attorney's criteria.

a. The claimant shall be afforded an opportunity to give testimony either refuting or affirming the overpayment.

b. The investigation and recovery ~~bureau~~ unit will issue a decision concerning the overpayment.

25.10(2) Restitution or the establishment of a repayment plan of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact shall not preclude the investigation and recovery ~~bureau~~ unit from instituting criminal proceedings against the claimant.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).

ITEM 23. Amend rule 871—25.12(96) as follows:

871—25.12(96) Wage ~~cross-match audit verification~~ procedure.

25.12(1) Each quarter, ~~cross-match audit Forms 65-5324~~ wage verification documents are mailed to selected employers requesting wage information on specific claimants as it concerns benefit payments.

25.12(2) The ~~form documents~~, upon completion by the employer, ~~is~~ are sent to the investigation and recovery ~~bureau~~ unit ~~for entering in the Iowa workforce development database system. If the form is not completed properly, it is sent to the employing unit for correct information and then returned for processing. Any potential review. Potential cases of conflict generated by the computer program will~~

result in an investigation assignment ~~and investigation packet~~. Claimants will be notified by means of Form 65-5332, (Preliminary Audit Notice), and given an opportunity to respond. If it is determined that an overpayment has occurred, the investigator will prepare Form 68-0031, Decision Overpayment Worksheet, on which the amount, weeks, type, and reason for the overpayment are identified. Claimants are notified of the determination on Form 65-5323, Unemployment Insurance Decision.

25.12(3) An employer may choose to participate in the automated ~~crossmatch~~ wage verification procedure by following the electronic submission guidelines.

25.12(4) An employer that fails to respond to a request for wage information pertaining to specific claimant(s) as such request pertains to benefit payments will be charged a fee of \$25 per claimant.

This rule is intended to implement Iowa Code section 96.11(1).